IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1691 OF 2003
IN
SUIT NO. 449 OF 1989

Ramchand Naraindas ..Plaintiff

Vs.

Anil Jolly and Ors. ..Defendants

And

Oriental Bank of Commerce ..Respondent

Ms.Eventa Gonsalves for the plaintiff

Mr.Khanna Desai ib M.P.Savla for defendant no.1, 5 and 7

Mr.Alok Kumar Bagla for defendant no.2, 3, 4 and 6

CORAM : S.U.KAMDAR, J
DATED : 7TH OCTOBER, 2005

P.C.:

1. The present suit is filed for declaration and for specific performance of Agreement for sale of Jolly Villa Property being Ex.A to the plaint and leasehold interest therein which is claimed by the plaintiff that it is held in trust for him and the defendant no.1. In effect plaintiff is seeking a claim on the basis of co-owner in respect of the said property. It is the case of the plaintiff

that there was an oral agreement for the purpose of development of the said property and suit was filed in 1987. Notice of Motion was taken out being Notice of Motion NO.2877 of 1992 for appointment of Receiver and Injunction. The said motion came up for hearing and final disposal before the learned single Judge and by order dt.16.7.96 after considering the rival contention of the parties was of the view that the rights of the plaintiff is protected and the defendants were directed to deposit a sum of Rs.12 lacs within 2 months of the said order and said amount be invested.

2. In the light of the fact that the order dt.16.7.96 was not complied with thus, the present motion was taken out for an order under Order 39 rule 2A of the CPC and order for striking of the defence of the defendants and that the written statement be removed from file under Order 39 Rule 11. A prayer was also made to deposit 12 lacs and appointment of Court Receiver. But before the matter was heard the defendants has complied with the order of depositing 12 lacs in this court. In respect thereof the learned counsel for the

plaintiff does not press motion in terms of prayers (a), (b) and (c). However, it is the case of the learned counsel for the plaintiff that Receiver be appointed in respect of aforesaid property. I am of the opinion that once the rights of the party are considered by the Court in Motion No.2877 of 1992 and he has come to the conclusion that on the facts of the case Receiver is not the remedy then unless there are any serious change of circumstances once again a party cannot make a prayer for Receiver on the same facts. The learned judge was of the view that the rights of the plaintiff can be protected by depositing of Rs.12 lacs and such Rs.12 lacs being deposited, question of further reliefs by appointment of Receiver does not arise. The Office of the Prothonotary and Senior Master, High Court, Mumbai is directed to deposit the said Rs.12.0 lacs in fixed deposit of any Nationalised Bank for 3 years and renew the same from time to time with accrued interest till further orders. In that view of the matter, I do not grant prayer clause (d). Motion dismissed. No order as to costs.